

Tommy Delando Burns  
FCI Seagoville  
P.O. Box 9000  
Seagoville, TX 75159  
Register No. 35499-177

Clerk's Office, U.S. District Court  
Western District of Texas  
200 East Wall, Room 222  
Midland, TX 79701

Dear Clerk:

Please find enclosed the foregoing Pro se motion I'm submitting today in the case of,  
  
United States of America v. Tommy Delando Burns, Case No. MO:06-CR-89 for filing.

Please stamp the date received and filed and forward me a copy of the additional front page I  
have furnished with the self addressed stamp envelope.

Sincerely,

Tommy Delando Burns

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
MIDLAND/ODESSA DIVISION

**FILED**

October 13, 2021

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY: KG  
DEPUTY

|                           |   |                      |
|---------------------------|---|----------------------|
| UNITED STATES OF AMERICA, | ) |                      |
|                           | ) |                      |
| Plaintiff,                | ) | Case No. MO:06-CR-89 |
|                           | ) |                      |
| v.                        | ) |                      |
|                           | ) |                      |
| Tommy Delando Burns,      | ) |                      |
|                           | ) |                      |
| Defendant.                | ) |                      |
|                           | ) |                      |

**DEFENDANT'S PRO SE MOTION FOR SENTENCE REDUCTION UNDER  
18 U.S.C. § 3582(b), FOR RELIEF UNDER THE FIRST STEP ACT OF 2018**

AND NOW, Comes Defendant Tommy Delando Burns in his Pro se capacity in the above matter before the Court. Defendant has learned through family and friends that there has been a decision reached by the Fifth Circuit on July 23, 2021 in his Appeal under Case Number 20-50681, i.e. limited remand. Defendant was represented by Laura G. Greenberg and has not heard from her or any other attorney's or the courts.

Defendant submits this motion in good-faith seeking to have the Court to enter a Order directing the BOP to release him immediately out of federal custody.

### POINT I.

Defendant will not submit a duplicate argument, instead, will demonstrate to the Court that he is in fact, as a matter of law, due his immediate release under the First Step Act of 2018, §404(a)-(c) and Fifth Circuit Authorities, e.g., United States v. Stewart, 964 F.3d 433 (5th Cir. 2020); United States v. Winters, 986 F.3d 942 (5th Cir. 2021); and United States v. Robinson, 980 F.3d 454 (5th Cir. 2020). The Stewart court held it was err for the district court to believe it was constrained by the U.S.S.G.M., when not reducing Stewart's sentence. (Vacate and remand)

The Robinson court held that it was nothing that prohibited the court to reduce Robinson's sentence and could have took into consideration the defendant would not be sentenced as a career offender. (Vacate and remand)

The Winters court held that, the defendants was eligible for a retroactive sentence reduction under the First Step Act because his "dual-object conspiracy" under 21 U.S.C. §846, involving both crack cocaine and powder cocaine, was a "**covered offense**" under §404(a). (Vacate and remand)

### POINT II.

Pursuant to section 404(c) of the First Step Act which requires a "**complete review**" Defendant's sentence is to be based upon the quantity of cocaine which is in the indictment and submitted to the jury in this case, that quantity is 105 grams of cocaine base. This quantity of cocaine base under 21 U.S.C. §841(b)(1)(B) has a minimum mandatory of only five years under the First Step Act of 2018 which made the statutory changes to §841(b)(1)(A) and §841(b)(1)(B) retroactive in this proceeding.

The 105 grams establishes a base offense level under the Sentencing Guidelines at 24 which at Criminal History Category VI, Defendants sentencing range is 100-125 months.

Defendant has been in custody over the minimum mandatory and the guideline range which warrants his immediate release out of federal custody.

### **CONCLUSION**

Defendant is currently serving a term of imprisonment that is no longer applicable due to the statutory changes under 21 U.S.C. §841(b)(1)(A) and §841(b)(1)(B) for the quantity of cocaine base (crack) involved in the case and submitted to the jury. The First Step Act of 2018 and the Fair Sentencing Act, sought to remedy these draconian discriminatory unjust sentences for non-violent offenders. Defendant has been warehoused in a prison without being notified by his attorneys of record and seeks to proceed before the court and have the court to adhere to the instructions from the 5th Circuit and the authorities within.

Defendant has his family to support him to make a successful transition back into society and become a positive role model to his family and children.

Defendant prays that the Court grants this motion.

Respectfully submitted,

Tommy Delando Burns, Pro se

CERTIFICATE OF SERVICE

I certify that on September 28, 2021 I have effected service of the foregoing motion upon the following parties below:

Joseph H. Gay, Jr./Brandi Young AUSA's  
U.S. Attorney's Office  
400 West Illinois Street, Ste. 1200  
Midland, TX 79701

Respectfully submitted,.

Tommy Delando Burns, Pro se  
FCI Seagoville  
P.O. Box 9000  
Seagoville, TX 75159  
Register No.35499-177

CERTIFIED MAIL



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35499-1771



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OCT 04 2021

CLERK, U.S. DISTRICT CLERK  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_  
DEPUTY

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